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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 188 **188**

THE UNITED STATES OF AMERICA,
Appellant,

v.

CHARLES F. GAYETTY, ANNIE L. HARRIS, GEORGE E. BREECE, BEN ROY, GERTRUDE BARRON, MARGELIA GILE BERNARD, ELTEEN KNOWLES, RALPH THIBAULT, GLENN THIBAULT, ANGELIA NICHOLS, EDNA L. KING, FERNE L. THIBIDEAU, LEONA M. DICKINSON, EDITH M. DICKINSON, GENEVA GILE FULLER, HERMAN GILE, HAROLD GILE, FLOYD GILE, SHERMAN GILE, EARLAND GILE, RENA GILE, GEORGE GILE, CHESTER GILE, AND LA FOREST GILE, *Appellees*

APPEAL FROM THE SUPREME COURT OF CALIFORNIA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM AND ACKNOWLEDGMENT OF SERVICE THEREOF.

J. HAROLD DECKER,
J. FRANK MARTIN, JR.,
J. P. PATTERSON,
Counsel for Appellees.

INDEX

Subject Index

	Page
Statement opposing jurisdiction and motion to dismiss or affirm	1
Statement of facts	2

Table of Cases Cited

Arndt v. *Griggs*, 134 U. S. 316	5
Buffington v. *Day*, 11 Wall. 124	8
Demorest v. *City Bank Farmers Trust Company*, 321 U. S. 36	5
Equitable Life Assurance Society v. *Brown*, 187 U. S. 308	7
Hamblin v. *Western Land Co.*, 147 U. S. 531	8
Hodges v. *Snyder*, 261 U. S. 600	7
Hood v. *McGehee*, 237 U. S. 611	5
Hutchinson Investment Co. v. *Caldwell*, 152 U. S. 65	6
Irving Trust Co. v. *Day*, 314 U. S. 556	3
Jones v. *Habersham*, 107 U. S. 179	5
Langdon v. *Sherwood*, 124 U. S. 74	5
Mackie v. *Story*, 93 U. S. 589	5
Mager v. *Grima*, 8 How. 490	6
Magoun v. *Illinois Trust and Savings Bank*, 170 U. S. 283	6
Manhattan Life Ins. Co. v. *Cohen*, 234 U. S. 123	7
Milheim v. *Moffat Tunnel District*, 262 U. S. 710	7
New Orleans v. *New Orleans Waterworks Co.*, 142 U. S. 79	8
New Orleans Waterworks Co. v. *Louisiana*, 185 U. S. 366	7
O'Keeffe v. *Adams*, 314 U. S. 572	4
Pennsylvania Hospital v. *Philadelphia*, 245 U. S. 20	7
Plummer v. *Coler*, 178 U. S. 115	6
South Carolina v. *U. S.*, 199 U. S. 451	8
Spies v. *Illinois*, 123 U. S. 131	6

Page

St. Louis, C. G. and Ft. S. Ry. Co. v. *Missouri*, 156 U. S. 478 8
U. S. v. *Butler*, 297 U. S. 1 8
U. S. v. *Fox*, 94 U. S. 315 2
U. S. v. *Perkins*, 163 U. S. 625 4
U. S. v. *Standard Oil Co.*, 332 U. S. 301 4
U. S. v. *United Mine Workers of America*, 330 U. S. 258 4

STATUTES CITED

Act of March 3, 1903, 32 Stat. 1112, 40 U.S.C.A. 304 9
Act of April 3, 1945, 59 Stat. 48, 31 U.S.C.A. 757e 8

Constitution of the United States:
Article VI 9, 10
10th Amendment 8
14th Amendment 3

Probate Code of California, Section 27 ..... 9, 10

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 188

In the Matter of the Estate of EMILY P. SANBORN, *Deceased*

THE UNITED STATES OF AMERICA,
Appellant,

v.

CHARLES F. GAYETTY, ANNIE L. HARRIS, GEORGE E. BREECE, BEN ROY, GERTRUDE BARRON, MARGELIA GILE BERNARD, ELTEEN KNOWLES, RALPH THIBAULT, GLENN THIBAULT, ANGELIA NICHOLS, EDNA L. KING, FERNE L. THIBIDEAU, LEONA M. DICKINSON, EDITH M. DICKINSON, GENEVA GILE FULLER, HERMAN GILE, HAROLD GILE, FLOYD GILE, SHERMAN GILE, EARLAND GILE, RENA GILE, GEORGE GILE, CHESTER GILE, AND LA FOREST GILE, *Appellees*

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 12, Paragraph 3, of the Rules of the Supreme Court of the United States, the Appellees herein above named, submit herewith their statement making against the jurisdiction of the Supreme Court of the United States to entertain an appeal in this case, showing that the questions on which a decision depends are so unsubstantial as not to need further argument.

Statement of Facts

The Appellees are some of the heirs-at-law of Emily P. Sanborn, deceased, and the matters stated by Appellant in its summary of the issues and the ruling below contained in its statement as to jurisdiction include a statement of the facts involved therein.

I

The record does not present for decision any substantial Federal question for the reason that this Court has heretofore foreclosed any such question by its previous decisions. The matter was first presented to this Court in *United States* v. *Fox*, 94 U. S. 315. The facts therein presented involved the validity of a testamentary disposition of real property situated in the State of New York by a resident of that state to the Government of the United States. The New York Statute, which was construed, provided that a devise of lands may be made "to any person capable by law of holding real estate; but no devise to a corporation shall be valid unless such corporation be expressly authorized by its charter or by statute to take by devise".

Mr. Justice Field in delivering the opinion of this Court stated:

> "The sole question for our consideration in this case is the validity of a devise to the United States of real estate situated in the State of New York. The question is to be determined by the laws of that State. It is not pretended that the United States may not acquire and hold real property in the State . . .
>
> "The power of the State to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted. It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposi-

tion of immovable property, whether by deed or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated. *McCormick* v. *Sullivant*, 10 Wheat., 202. The power of the State in this respect follows from her sovereignty within her limits, as to all matters over which jurisdiction has not been expressly or by necessary implication transferred to the Federal Government. The title and modes of disposition of real property within the State, whether *inter vivos* or testamentary, are not matters placed under the control of federal authority. Such control would be foreign to the purposes for which the Federal Government was created, and would seriously embarrass the landed interests of the State . . .

"Every person must, therefore, devise his lands in that State within the limits of the statute or he cannot devise them at all. His power is bound by its conditions . . .

"A devise to the United States of real property situated in that State is, therefore, void".

The question was again presented in *Irving Trust Co.* v. *Day*, 314 U. S. 556, in which this Court was asked to invalidate a statute of descent and distribution of the State of New York upon the ground that it impaired the obligation of a contract in violation of the Fourteenth Amendment. The statute bestowed certain rights to a surviving spouse to elect to take property under the will or under the laws of succession. The rights thus bestowed were contrary to the terms of a document executed prior to the effective date of the statute, which document purported to be an ante-nuptial contract. In upholding the validity of the New York statute this Court said at Page 562:

"The rights of succession to the property of a deceased, whether by will or by intestacy, are of statutory creation, and the dead hand rules succession only by sufferance. Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or

> even abolish the power of testamentary disposition over property within its jurisdiction. *Mager* v. *Grima*, 8 How. (U.S.) 490, 12 L. Ed. 1168; *United States* v. *Fox*, 94 U. S. 315, 24 L. Ed. 192; *United States* v. *Perkins*, 162 U. S. 625, 41 L. Ed. 287, 16 S. Ct. 1073; cf. *Randall* v. *Kreiger*, 23 Wall. (U.S.) 137, 148, 23 L. Ed. 124, 126".

The case of *United States* v. *Fox*, supra, is no isolated expression of this Court's decision on the issue herein involved. It was cited with approval in *United States* v. *Perkins*, 163 U. S. 625, 628 wherein this Court spoke:

> "We know of no legal principle to prevent the legislature from taking away or limiting the right of testamentary disposition or imposing such conditions upon its exercise as it may deem conducive to public good".

Again in *United States* v. *United Mine Workers of America*, 330 U. S. 258, 275 *United States* v. *Fox*, supra, was cited as supporting the statement that in common usage the term "person" does not include the sovereign and statutes employing it will not ordinarily be construed to do so.

As late as 1946 in *United States* v. *Standard Oil Company* 332 U. S. 301, 308, this Court cited *United States* v. *Fox*, supra as supporting the statement that in many situations,

> ". . . rights, interests, and legal relations of the United States are determined by application of State law, where Congress has not acted *specifically*. (Emphasis supplied) . . . The Government, for instance may place itself in a position where its rights necessarily are determinable by State law, as when it purchases real estate from one whose title is invalid by that law in relation to another's claim. Cf. *United States* v. *Fox*, 294 U. S. 315, 24 L. Ed. 192".

Again *United States* v. *Fox*, supra, was cited by this Court in *O'Keeffe* v. *Adams*, 314 U. S. 572, in dismissing

an appeal involving the validity of a Florida statute respecting the rights of descent and distribution for want of a substantial Federal question.

Not only was *United States* v. *Fox*, supra cited in *Irving Trust Company* v. *Day*, supra, but the latter case was approved and cited by this Court in *Demorest* v. *City Bank Farmers Trust Company*, 321 U. S. 36, 48 as supporting the statement that rights to succession by will are created by the State and may be limited, conditioned, or abolished by it.

A brief reference to the following cases is respectfully suggested as further indication that the question herein presented has been heard and decided by this Court:

Jones v. *Habersham*, 107 U. S. 179, holding that the uniform course of decisions of this Court is such as to remove all doubt that the validity of devises and bequests as against the heirs at law depends on the law of the State in which the land lies and the testator resides;

Langdon v. *Sherwood*, 124 U. S. 74, holding that the mode of conveyance of real property is subject to the control of the legislature of the State wherein the land lies;

Mackie v. *Story*, 93 U. S. 589; *Henderson* v. *Griffin*, 30 U. S. 151; and *Hood* v. *McGehee*, 237 U. S. 611 were cases in which this Court ruled that a decision of the highest court in a State construing a state statute of wills and succession is binding upon the Supreme Court of the United States. In the latter case Mr. Justice Holmes succinctly put the rule as: A State is the sole mistress of the devolution of its land by descent;

Arndt v. *Griggs*, 134 U. S. 316, wherein *U. S.* v. *Fox*, supra, was cited to substantiate the principle that title to real property and methods of determining any unsettled questions concerning it is the duty of the State within which the land is located and the manner of accomplishing this is local in

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THE UNITED STATES OF AMERICA,

Appellant,

vs.

CHARLES F. GAYETTY, ANNIE L. HARRIS, GEORGE E. BREECE, *et al.*,

Appellees.

An Appeal From the Supreme Court of the State of California.

BRIEF FOR APPELLEES.

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SUBJECT INDEX

PAGE

Official reports of the opinions of the court below 1

Jurisdiction 2

Summary of argument 2

Argument 4

1. The right to regulate testamentary disposition of property is, and always has been, within the exclusive province of the state in which the property is located 4

2. The sovereignty of the United States with respect to testamentary privileges confers at best only the capacity to receive testamentary dispositions, and the United States has no sovereign right under the Constitution to enforce a testamentary gift to it in the face of a state statute prohibiting the making of such gift 11

3. The contention that the doctrine of U. S. v. Fox should be repudiated is to disregard the rights reserved to the states under the Tenth Amendment 18

4. The argument of appellant is unsound and suggests untenable application of constitutional concepts leading to an unconstitutional result 21

5. Conclusion 29

TABLE OF AUTHORITIES CITED

CASES	PAGE
Arndt v. Griggs, 134 U. S. 316	8, 20
Bradbury's Estate, In re, 210 Iowa 1013, 231 N. W. 661	4
Brine v. Insurance Co., 96 U. S. 627	7, 20
Brush v. Commissioner of Internal Revenue, 300 U. S. 352	13, 17
Burnison, Estate of, 33 Cal. 2d 647	1
Clark v. Allen, 331 U. S. 503	14, 18, 21, 22, 23, 24
Davis v. Pringle, 268 U. S. 315	23
Delano, Matter of, 176 N. Y. 486, 48 N. E. 871	4
Demarest v. City Bank Co., 231 U. S. 36	9
Dickson v. United States, 125 Mass. 311	11, 24
Educational Films Corp. v. Ward, 282 U. S. 379	13
Epperson v. White, 156 Tenn. 155, 299 S. W. 812	4
Evans Estate, In re, 193 Iowa 1240, 188 N. W. 774	4
Hailey v. McLaurin, 112 Mass. 705	4
Haldeman v. Haldeman, 343 Ill. 550, 174 N. E. 890	4
Heff, In re, 197 U. S. 488	13
Henderson v. Griffin, 30 U. S. 151	10
Herber's Succession, 128 La. 111	4
Hood v. McGehee, 237 U. S. 611	10
Hutchinson Inv. Co. v. Caldwell, 152 U. S. 65	7, 8, 20
Irving Trust Co. v. Day, 314 U. S. 556	9, 19, 24
James v. Habersham, 107 U. S. 174	7
Jones v. Habersham, 107 U. S. 174	20
Jones v. Hunter, 6 Rob. (La.) 235	4
Kansas v. Colorado, 206 U. S. 46	8, 20
Kohl v. United States, 191 U. S. 367	25
Langdon v. Sherwood, 124 U. S. 74	20
Lewark v. Dodd, 288 Ill. 80, 123 260	4
Linder v. United States, 268 U. S. 517	16

PAGE

Mackie v. Story, 93 U. S. 589 10
Mager v. Grima, 80 How. 490 8
Magoun v. Illinois Trust Co., 170 U. S. 283 ..... 8, 20, 28
Marett v. Broom, 160 S. Ct. 91, 158 S. W. 216 4
Maxwell v. Bugbee, 250 U. S. 525 15
McCormick v. Sullivan, 10 Wheat. 202 6
McCulloch v. Maryland, 4 Wheat. 316 14
Noyer Estate, In re, 40 Mont. 178, 105 Pac. 1013 4
O'Keefe v. Adams, 314 U. S. 572 15
Oyama v. California, 332 U. S. 633 ..... 18, 23
Penn Dairies, Inc. v. Milk Control Commission of Pennsylvania, 318 U. S. 261 16
Plummer v. Cole, 178 U. S. 115 ..... 7, 8, 20, 28
Porter v. Union Trust Co., 182 Ind. 637, 108 N. E. 117 4
Shelley v. Kraemer, 334 U. S. 1 ..... 18, 23
Sherwood's Estate, In re, 122 Wash. 648, 211 Pac. 734 4
Snyder v. Bettman, 190 U. S. 249 28
South Carolina v. United States, 199 U. S. 437 13
Stainback v. Mo Hock Ke Lok Po, 93 U. S. Adv. 581, 69 S. Ct. 606 14
State v. Duncan, 302 Mo. 130, 257 N. W. 784 4
State of Michigan v. United States, 317 U. S. 338 26
Terral v. Burke Construction Co., 257 U. S. 529 27
Texas v. White, 7 Wall. 700 17
United States v. Alleghany County, 322 U. S. 174 26
United States v. Cooper Corp., 312 U. S. 600 ..... 20, 23
United States v. Fox, 94 U. S. 315 ..... 2, 5, 6, 15, 17, 18, 19, 20
United States v. Mine Workers, 330 U. S. 258 ..... 19, 23
United States v. Perkins, 163 U. S. 625 ..... 7, 20, 28
United States v. Snyder, 149 U. S. 210 26
United States v. Standard Oil Co., 332 U. S. 301 ..... 16, 19
Upham v. Plankinton, 152 Wis. 274 4

PAGE

White v. Howard, 38 Conn. 342 4
Wilkinson's Estate, In re, 113 Cal. App. 645, 289 Pac. 1037 4
Wolfe v. Mueller, 46 Colo. 335, 104 Pac. 487 4

STATUTES

Act of March 3, 1903, 32 Stats. 1112 (40 U. S. C., Sec. 304) 12
Act of April 3, 1945, Chap. 51, 59 Stats. 48 (31 U. S. C., Sec. 757e) 12
California Constitution, Art. VI 13, 14, 22, 26
California Probate Code, Sec. 27 ..... 5, 10, 12, 18, 21, 24, 27, 29
United States Constitution, Art. I, Sec. 8 25
United States Constitution, Art. II, Sec. 2 22
United States Constitution, Tenth Amendment 16
United States Constitution, Fourteenth Amendment 23

TEXTBOOK

The Constitution of the United States, compiled in Legislative Reference Service, Library of Congress, p. 765 23

IN THE

Supreme Court of the United States

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No. 188

THE UNITED STATES OF AMERICA,

Appellant,

vs.

CHARLES F. GAYETTY, ANNIE L. HARRIS, GEORGE E. BREECE, *et al.*,

Appellees.

An Appeal From the Supreme Court of the State of California.

BRIEF FOR APPELLEES.

Opinions of the Court Below.

The opinion of the Supreme Court of the State of California [Tr. 32-33], from which this appeal was taken, was written in connection with its decision in the *Estate of Burnison*, after both cases were argued together before said court. The issues in both cases being practically identical, the Supreme Court of California wrote the principal decision in the *Burnison* case and in its decision in the instant case referred to and in part adopted the decision in the *Burnison* case. The decision of the Supreme Court of California in the *Burnison* case is on appeal before this court under No. 171, October Term, 1949. The official citation of the Supreme Court of California in the instant case is 33 Cal. 2d 647, and the official citation of that court in the *Burnison* case is 33 Cal. 2d 638.

its nature; it is not a matter of federal concern or vested in the general government;

Hutchinson Investment Co. v. *Caldwell*, 152 U. S. 65, citing *U. S.* v. *Fox*, supra, in supporting the holding that the question of descent and heirship of real estate is exclusively governed by the law of the place where the land is situated;

Magoun v. *Illinois Trust and Savings Bank*, 170 U. S. 283, holding the right to take property by devise or descent is a creature of law and not a natural right, and therefore the authority which confers it may impose conditions upon that right and citing *Mager* v. *Grima*, 8 How. 490 as authority for the proposition that an imposition of a tax on legacies was no more than an exercise of the power which every state and sovereignty possesses of regulating who shall and who shall not be capable of taking property within its dominion by will or succession;

Plummer v. *Coler*, 178 U. S. 115, again declaring that the right to take property by will or descent is derived from and regulated by local law.

These decisions by this Court reflect a uniform holding on the issue presented by this appeal and in view of such uniformity no further argument is required. In *Spies* v. *Illinois*, 123 U. S. 131, 164 this Court in considering a petition for a writ of error said:

> "In our opinion the writ ought not to be allowed by the Court, if it appears from the face of the record that the decision of the Federal question which is complained of was so plainly right as not to require argument, and especially if it is in accordance with our well considered judgments in similar cases. . . . When . . . a motion to affirm is united with a motion to dismiss for want of jurisdiction, the practice has been to grant the motion to affirm when 'the question on which our jurisdiction depends was so manifestly decided right, that the case ought not to be held for further argument.'

Arrowsmith v. *Harmoning*, 118 U. S. 194, 195; *Church* v. *Kelsey*, 121 U. S. 282."

It is well settled that a motion to affirm the judgment is to be granted if the questions on which the decision depends are so wanting in substance as not to need further argument. *Hodges* v. *Snyder*, 261 U. S. 600. A Federal question requiring no analysis and exposition for its decision is frivolous and the motion to dismiss should be granted. *Milheim* v. *Moffat Tunnel District*, 262 U. S. 710. But it is a real, substantial Federal question on which the case may be made to turn and not merely a formal Federal question that is essential to the jurisdiction of this Court. If a question is presented which has been so explicitly foreclosed by a decision or decisions of this Court as to leave no room for real controversy, a motion to dismiss should prevail. *Equitable Life Assurance Society* v. *Brown*, 187 U. S. 308; *New Orleans Waterworks Co.* v. *Louisiana*, 185 U. S. 366; *Pennsylvania Hospital* v. *Philadelphia*, 245 U. S. 20; *Manhattan Life Ins. Co.* v. *Cohen*, 234 U. S. 123.

It is submitted that the conclusions of the Supreme Court of the State of California in so far as they dealt with the right of the State to regulate the testamentary disposition of the property of one of its residents and in particular the real property situated within its dominion were clearly in accord with the decisions of this Court. There can be now, in view of the many decisions of this Court on the subject, no room for challenging the general proposition that it is within the exclusive power of the State to regulate the modes of acquisition and transfer and the rules of the descent and the extent to which a testamentary disposition may be made of the property within its jurisdiction.

II.

This Court does not have jurisdiction of this appeal for the reason that no real federal question is involved. The Supreme Court has no jurisdiction to review the judgment of a state court unless a real, and not a fictitious federal question is involved. *Hamblin* v. *Western Land Co.*, 147 U. S. 531; *St. Louis C. G. and Ft. S. Ry. Co.* v. *Missouri*, 156 U. S. 478.

As stated by the court in *New Orleans* v. *New Orleans Waterworks Co.*, 142 U. S. 79:

> "The bare averment of a federal question is not in all cases sufficient. It must not be wholly without foundation. There must be at least color of ground for such averment, otherwise a federal question might be set up in almost any case, and the jurisdiction of this court invoked solely for the purpose of delay."

Section 27 of the Probate Code of the State of California, excluding the United States as a lawful taker under a will (so construed by the Supreme Court of the State of California in the instant case), does not violate any provisions of the Constitution of the United States or any Act of Congress. The Constitution does not in any of its provisions, either expressly or by implication, deprive the states of the right to regulate tenure of property through testament or succession. Such power is therefore reserved to the states under the Tenth Amendment. The Constitution does not in any of its provisions, either expressly or by implication, give Congress such power. Therefore, if Congress had assumed such power, which it has not, its act would be unconstitutional. *South Carolina* v. *U. S.*, 199 U. S. 451; *U. S.* v. *Butler*, 297 U. S. 1; *Buffington* v. *Day*, 11 Wall. 124.

In Appellant's Statement As to Jurisdiction the substantiality of its position is based in part upon the thesis that the Act of April 3, 1945, 59 Stat. 48, 31 U. S. C. A. 757e, and

the Act of March 3, 1903, 32 Stat. 1112, 40 U. S. C. A. 304, recognize the authority of the United States to take by will. Even though Congress had the constitutional right to regulate tenure of property through testament, it is apparent that these acts do not purport to do so, for they express no more than mere recognition of the right of the United States to take property by will. In this connection it is appropriate to note that the legislatures of a great majority of the states have not seen fit to enact statutes similar to Section 27 of the Probate Code of the State of California. The only reasonable interpretation of these Acts is that Congress has given the United States the right to accept testamentary gifts from testators in those states. Congress having not thereby attempted to regulate the tenure of property through testament, it cannot be said that Section 27 of the Probate Code of the State of California as interpreted by the Supreme Court of the State of California is in conflict with either of these acts.

In Appellant's Statement As to Jurisdiction the only other point relied upon is that Section 27 of the Probate Code of the State of California, as interpreted by the Supreme Court of the State of California in the instant case is a "discrimination against the United States, in violation of Article VI of the Constitution".

However the supremacy of the Constitution and Statutes of the United States cannot be said to be all inclusive. They are supreme only when they have spoken and when silent as to a right or a power, the supremacy as to that right or power is reserved to the States. *South Carolina* v. *U. S.*, supra. By the decision of the lower court interpreting Section 27 there has been no failure to recognize such supremacy for the reason that, as pointed out hereinabove, the Constitution does not deny a state the right to control the disposition of the property within its dominion by will or succession nor does any Federal statute, properly

construed within the limitations of the Constitution, govern such testamentary powers.

Any discrimination against the United States is not in violation of Article VI of the Constitution nor of any statute of the United States, but is merely the exercise of the sovereign right of a state to regulate the testamentary privileges of its citizens.

No cases have been offered by Appellant which in any way effect the principles set forth in the decisions of this Court, herein cited.

It is submitted that the nature of this case and the rulings of this Court are not such as to bring this appeal within the jurisdiction of this Court and that any question under the Constitution of the United States either as respects Section 27 of the Probate Code of the State of California or the decision of the Supreme Court of the State of California is foreclosed by previous decisions of this Court and is so unsubstantial and frivolous as to justify the motion to affirm, if not the motion to dismiss.

Wherefore, Appellees move that this Honorable Court enter its order dismissing the appeal or, in the alternative, enter its order affirming the judgment of the Supreme Court of the State of California, said motion being made upon the ground that this Court does not have jurisdiction of said appeal for the reason that the nature of this case is not such as to bring this appeal within the jurisdiction of this Court and for the reason that the questions presented therein are unsubstantial.

Respectfully submitted,

J. HAROLD DECKER,
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